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February 13, 1982

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ARIZONA ATTORNEY GENERAL

INTERAGENCY

The Honorable Jones Osborn
Arizona State Senator
State Capitol, Senate Wing
Phoenix, Arizona 85007

Re: I82-023 (R82-002)

Dear Senator Osborn:

We are writing in response to your letter of January 4, 1982, in which you requested an opinion concerning the scope of authority of commissioners, appointed to organize a new county, under A.R.S. § 11-142. When a new county has been authorized by the voters pursuant to A.R.S. § 11-138, an election commission shall be appointed pursuant to A.R.S. § 11-141. The powers and duties of that commission are set forth in A.R.S. § 11-142, which provides:

Before entering upon their duties each commissioner shall take and subscribe the official oath required of public officers. Thereafter the commissioners shall have the powers and perform the duties with reference to the new county as the board of supervisors of a county until the officers of the new county are elected. The proposed new county shall not be deemed to exist for any purpose other than for completion of its organization until the officers thereof are elected and qualified. After appointment of the commissioners, the boards of supervisors of the counties from which the territory is to be taken shall have no further duty to perform in connection with the organization thereof.

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You specifically have asked the extent to which the commissioners may exercise the powers and duties of a board of supervisors, in light of the subsequent language limiting the existence of the county only for purposes of completing its organization. We think the statutory scheme allows commissioners to have powers and perform duties relating only to preparing the county for the next general election, at which time a board of supervisors will be elected.

It is well-settled that county officers possess only the powers expressly conferred by statute or necessarily implied therefrom. Peter v. Frye, 71 Ariz. 30, 223 P.2d 176 (1950). The fact that A.R.S. § 11-142 specifies that the new county exists only for the purposes of completing its organization necessarily limits the scope of activity permitted to be exercised by the commissioners. A.R.S. § 11-143 mandates the commissioners to divide the proposed new county into precincts and prepare for the next general election.¹ The new county is deemed to be organized only upon the election of the board of supervisors. A.R.S. § 11-144. In short, therefore, the commissioners may not operate the proposed county as an already organized entity; their jurisdiction is limited to doing only those things that will prepare the county for the next general election, after which the county will become an operating political subdivision.

In order to prepare for the election, A.R.S. § 11-142 authorizes the commissioners to exercise the powers and duties of a board of supervisors. Although you have asked for a list of specific powers and duties that may be exercised, we think the commissioners must have discretion to decide which powers and duties set forth in A.R.S. § 11-251 are directly related to and necessary for the organization of a new county.

Sincerely,



BOB CORBIN
Attorney General

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1. Various other election-related duties are set forth in A.R.S. §§ 11-145 and 11-146.